

## *Terms and Conditions*

### **1 Definitions and Interpretations**

1.1 In these Conditions unless the context otherwise requires

**“Condition”** means these terms and conditions and any special terms and conditions agreed in writing between the Company and the Supplier.

**“Contract”** means any contract between the Company and the Supplier for the purchase of Goods and / or Services.

**“Company”** means Portadown Heritage Tours whose head office is 6A Carleton Street, Portadown, Co Armagh

**“Goods”** means the goods (including any part or parts of them) which the Supplier is to provide to the Company pursuant to the order in accordance with these Conditions.

**“Goods Legislation”** means any applicable statute, statutory rule, order, directive, regulation or other instrument having force of law (including any directive or order promulgated by any competent supra-national body), all British and European standards, UKAS (United Kingdom Accreditation Service) and all other legislation for the time being in force relating without limitation to the manufacture (including raw materials or chemicals used in the process), packaging, delivery, carriage, storage, installation and use of the Goods.

**“Intellectual Property Rights”** means any patent copyright (including moral rights), database right, design right, registered design, trade mark or service mark (whether registered or otherwise), domain name, know-how, utility model, unregistered design or other industrial or any other intellectual property right subsisting anywhere in the world and, where relevant, any application for protection of proprietorship of any such right.

**“Order”** means any order from the Company to the Supplier for the supply of Goods or Services in such form as the Company may determine from time to time in accordance with condition 2.3.

**“Services”** means the Services which the Supplier is to provide to the Company pursuant to the Order in accordance with these Conditions.

**“Specification”** means the Company’s specification or stipulations for the Goods and / or Services notified in writing to the Supplier.

**“Supplier”** means the person, firm or company to whom the Order is addressed.

- 1.2 The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of these Conditions.
- 1.3 Words importing the singular shall include the plural and vice versa. Words importing a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.
- 1.4 The words and phrases “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

## **2 Basis of Contract**

- 2.1 The Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Supplier purports to apply under any quotation, Order acknowledgement or any other document issued by the Supplier).
- 2.2 The Order is an offer made by the Company to the Supplier and the contract shall come into effect upon acceptance of the Order by the Supplier. The Order number must be quoted on all correspondence and all invoices relating to such Order.
- 2.3 No Order shall be capable of acceptance by the Supplier unless it is in writing on the Company’s official order form and it is signed by an authorised representative on behalf of the Company.

## **3 Delivery**

- 3.1 Delivery of the Goods shall take place strictly in accordance with the Company’s delivery instructions whether given in the Order or separately. Each delivery must be clearly marked in accordance with the specification and / or the Order.
- 3.2 Time of delivery is of the essence of the Contract. The Company shall be under no obligation to accept delivery of the Goods before the specified delivery time, but reserves the right to do so.
- 3.3 The Company reserves the right to cancel or vary the whole or any part of the Orders if the goods are not delivered or the services completed on time for any reason whatsoever.

- 3.4 The Company shall have the right to change its delivery instructions at any time on giving fourteen (14) days notice.
- 3.5 The Company shall not be obliged to accept quantities of the Goods which vary from those specified in the Specifications or the Order.
- 3.6 The Goods will be properly packed and secured in such a manner as to reach their destination undamaged and in good condition. The Company shall not be obliged to return to the Supplier any packaging materials for the Goods.
- 3.7 All goods must be accompanied by a detailed delivery note stating the Order number, the date, the goods being delivered and, if relevant the number of any delivery schedule.
- 3.8 An authorised person must sign a delivery note when the Goods are delivered.

#### **4 Acceptance**

- 4.1 The Company shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery or after any latent defect has become apparent. For the avoidance of doubt no inspection or testing by the Company whether before or after delivery of the Goods nor the signing of any delivery note or other document acknowledging physical receipt of any Goods shall be deemed to constitute or evidence acceptance or approval of the Goods for the purposes of the Sale of Goods Act 1979 (as amended) nor be deemed a waiver of the Company's rights either to cancel or return all or any part thereof where the Goods are found to be defective or not in accordance with the Contract, Order and Specification.
- 4.2 The Supplier shall promptly keep the Company informed of any matter of which it is or reasonably should, as supplier of the Goods, be aware relating to the storage, transportation, handling, assembly or use of the Goods by the Company (including legislation or advice from responsible or professional or legal bodies in respect of raw materials used in the manufacture of the Goods) and the actions it has taken or proposes to take and those that the Company should take in relation to such matters.
- 4.3 Without prejudice to any other rights in these Conditions the Company shall be entitled to reject the goods if they are in breach of any condition or warranty implied by any Goods legislation.
- 4.4 If any Goods are rejected by the Company due to a breach of these Conditions or a breach of any conditions or warranty implied by any Goods legislation then the Company will return the Goods back to the Supplier at the Suppliers expense.

- 4.5 If the Company returns any goods to the supplier pursuant to Condition 4.4 above then Company shall not be responsible for any damage caused in returning the Goods nor for any delay.

## **5 Title and Risk**

- 5.1 The Goods shall be at the risk of the Supplier until they are delivered in accordance with the Contract when, without prejudice to any right of rejection which the Company may have under the Contract or by the law, title to and risk in the Goods shall pass to the Company, provided that if the Company pays for the Goods prior to delivery, title to the Goods shall pass to the Company when payment is made.

## **6 Provision of Services**

- 6.1 If the Contract is for or includes Services to be performed by the Supplier then, the Supplier undertakes, represents and warrants to the Company that:
- (a) the supplier shall carry out the Services strictly in accordance with the Order and the Specification;
  - (b) the services will be performed by appropriately qualified and trained personnel with due care and diligence and to such high standard of quality as it is reasonable for the Company to expect in all the circumstances;
  - (c) the time of performance of the Services is of the essence of the Contract.

## **7 Price and Payment**

- 7.1 The price of the Goods and / or Services shall be stated in the Order. The price shall be inclusive of all packaging, packing, labelling, insurance, delivery, installation costs and all other costs incurred by the Supplier in relation to the Goods and their delivery unless otherwise specified in the Order.
- 7.2 All sums payable under the Contract are exclusive of VAT, unless otherwise stated and in such cases shall be added if appropriate at the rate prevailing at the relevant tax point.
- 7.3 Invoices shall state the Order number, the delivery note number and the date and if relevant, the number of any delivery schedule. The invoice shall also contain a sufficiently detailed description of the Goods to enable the Company to identify the Goods or in such other form as the Company may specify from time to time. Invoices shall be addressed to the Accounts Department at the address for the Company set out in these Conditions.

- 7.4 Unless otherwise stated in the Order, the Company shall pay the price of the Goods or Services within 30 days of the later of:
- (a) receipt by the Company of an invoice issued in accordance with Condition 7.3;
  - (b) or after acceptance of the Goods or Services by the Company.

No interest shall be payable by the Company under this Contract in any circumstances whatsoever.

- 7.5 The prices charged by the Supplier to the Company shall not exceed those prices agreed.
- 7.6 If any sums are due to the Company from the Supplier, then the Company shall be entitled to exercise the right to set-off such sums against any payments due to the Supplier from the Company under or in relation to this or any other contract. The Supplier shall not be entitled to apply any amount due to the Company under the Contract in or towards payment of any sum owing by the Company to the Supplier in relation to any matter whatsoever.
- 7.7 Any money paid by the Company to the Supplier in respect of any Goods rejected under these Conditions together with any additional expenditure over and above the price specified in the Order reasonably incurred by the Company in obtaining other goods in replacement of any rejected Goods shall be paid by the Supplier to the Company within seven (7) days of the date of the Company's notice demanding the same or, at the Company's sole option, shall be deducted from the money still to be paid by the Company to the Supplier in relation to such Goods.

## **8 Warranties**

- 8.1 The Supplier undertakes, represents and warrants to the Company that the Goods and their packaging and labelling shall:
- (a) be accompanied with accurate, complete and comprehensible instructions for the treatment, assembly, use and / or storage of the Goods;
  - (b) conform to the Specification and with any instructions of the Company, and shall otherwise meet the requirements of the Order and this Contract;
  - (c) be of satisfactory quality, free from defects in materials and workmanship and fit for their intended purpose (whether such purpose is implied or expressly stated in the Specification, Orders or Contract);
  - (d) comply with all Goods Legislation;
- 8.2 The Supplier shall use its best endeavours to transfer or assign to the Company or otherwise obtain for the benefit of the Company any guarantee, warranty or any

other confirmation of quality, title or fitness for purpose given by any manufacturer of the Goods in respect of the Goods (or part thereof) to the extent that the same is capable of such transfer or assignment to the Company or otherwise providing such benefit for the Company.

- 8.3 Where there is a breach of the Supplier's warranty in Condition 6.1 or Condition 8.1 above or if any obligation, warranty or requirement imposed by, given or stated in the Contract in respect of the Goods or Services is not complied with, or the Goods or any instalment of the Goods are not delivered at the specified time or the Goods are not delivered at the specified time or the Goods delivered are damaged the Company shall be entitled at its sole discretion without liability to the Supplier (arising out of such action) and without prejudice to any other right or remedy the Company may have to take one or more of the following actions to:
- (a) cancel the Contract and treat the Contract as having never been entered into by the Supplier; and / or
  - (b) reject the relevant Goods (in whole or in part) any Goods already delivered which cannot be effectively and commercially used by reason of the non delivery of any undelivered Goods; and / or
  - (c) refuse to accept any subsequent delivery of the Goods; and / or
  - (d) recover from the Supplier any costs reasonably incurred by the Company in obtaining substitute goods or services from another supplier; and / or
  - (e) require the Supplier at its sole cost to replace, repair the Goods or carry out such work as is necessary within fourteen (14) days so that the Goods conform to the Contract, Order and specification; and / or
  - (f) require the Supplier at its sole cost to re-execute the Services in accordance with the Contract, Order and specification within seven (7) days; and / or
  - (g) treat this Contract as discharged by the Supplier's breach and:
    - (i) delay payment of the price for the Goods and Services until the requirements of this Contract, Order and any Specification are entirely fulfilled,
    - (ii) refuse to make payment of the price of the Goods or Services; or
    - (iii) require the payment of any part of the price of the Goods or Services which the Company has paid whether or not the Company has previously required the Supplier to repair the Goods, supply any replacement Goods or re-execute the Services; and / or

- (h) claims such as damages as may have been incurred by the Company as a result of the Supplier's breach of the Contract.
- 8.4 If the Company claims that an Order has not been fulfilled or has been incorrectly fulfilled the Supplier shall be deemed to accept the validity of the claim unless it serves written notice on the Company disputing the said claim and stating the reasons for its dispute within seven (7) days of the date of the said claim.
- 5. If the Company exercises any right under these Conditions the Company may at its absolute discretion require the Supplier to collect the relevant Goods forthwith or return the Goods to the Supplier at the Supplier's cost.
- 6. The Company's rights under these Conditions are in addition to any statutory remedies available to the Company.

**9. Product Recall**

- 1. The Supplier shall immediately notify the Company in writing providing all relevant details if it discovers that there is:
  - (a) any defect in the Goods which have been delivered to the Company at any time; or
  - (b) any error or omission in the instructions for the use and / or assembly of the Goods;  
(whether or not any such defect, error or omission represents a breach of the warranty in Condition 9.1 or any other Condition) which causes or may cause any risk of death, injury or damage to property.

**10. Confidentiality**

- 1. The Supplier shall keep and procure to be kept secret and confidential all information disclosed or obtained as a result of the relationship of the parties under the Contract and shall not use nor disclose the same save for the purpose of the proper performance of the contract or with the prior written consent of the Company.
- 2. The obligations of confidentiality in this Condition 12 shall not extend to any matter which the Supplier can show is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under these Conditions; was in its written records prior to entering into the Contract; was independently disclosed to it by a third party entitled to disclose the same or is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

3. The Supplier shall not make any announcement or otherwise publicise the existence of or disclose to any person the provisions of the Contract without the prior written consent of the Company.

## **2. Intellectual Property**

- 2.1. All materials including any Specifications supplied by the Company, and any copies made by or for the Supplier shall be the property of the Company, shall only be used for the purpose of this Contract, shall be treated by the Supplier as strictly confidential and shall be returned by the Supplier immediately on request to the Company at the Supplier's sole risk and cost.
- 2.2. Any and all Intellectual Property Rights created or acquired in the course of or as a result of any work carried out by the Supplier under or in pursuance of the Contract, shall, from the date of their creation or acquisition by the Supplier and otherwise promptly upon the request by the Company, belong exclusively, throughout the world, to the Company, unless a separate Intellectual Property Agreement has been entered into prior to the date of their acquisition by the Company.

## **11 Bribery Legislation**

- 11.1 Legislation includes Bribery Act 2010, Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916, or any similar anti-bribery or anti-corruption legislation of any jurisdiction applicable from time to time to the Contractor, the Customer, this Contract and/or its subject matter.

### **11.2 ANTI-CORRUPTION**

#### **Representation, warranties and undertakings**

The Contractor represents warrants and undertakes to the Customer that:

- 11.2.1 in relation to this Contract and/or its subject matter, neither the Contractor nor any of its employees, sub-Contractors or agents or others performing services on behalf of the Contractor has done (or agreed to do) or will do (or agree to do) anything which constitutes a breach by the Contractor or the Customer of any Bribery Legislation;
- 11.2.2 the Contractor has in place, and will at all times during the term of this Contract continue to have in place, adequate procedures designed to prevent any person associated with the Contractor from committing an offence under any Bribery Legislation and as a minimum such procedures comply, and will at all times during the term of this Contract comply, with the Bribery Act 2010;



- 11.2.3 the Contractor will throughout the term of this Contract comply with, monitor and enforce the procedures referred to in Clause 14.2.2;
- 11.2.4 the Contractor has conducted (and documented), and will conduct (and document), appropriate due diligence into the selection of each of its employees, sub-Contractors, agents and others performing services on its behalf which in each case is involved with the subject matter of this Contract;
- 11.2.5 the Contractor will procure that each of its agents, sub-Contractors and others performing services on its behalf which in each case is involved with the subject-matter of this Contract will:
- (a) at all times during such agent's, sub-Contractor's or other's appointment in relation to the subject matter of this Contract have in place adequate procedures designed to prevent anyone associated with such agent, sub-Contractor or other person from committing an offence under any Bribery Legislation and as a minimum such procedures will at all such times be no less stringent than the Customer's own ethics code, policies and procedures from time to time, as notified to the Contractor pursuant to Clause 14.2.5 and
  - (b) throughout the term of such agent, sub-Contractor's or other's appointment in relation to the subject matter of this Contract, comply with, monitor and enforce the procedures referred to in Clause 14 including subsections;
- 11.2.6 the Contractor will promptly report to the Customer any suspicion which the Contractor (or any of its employees, agents, sub-Contractors or others performing services on its behalf) has that there has been, or is likely in future to be, any breach of any Bribery Legislation in relation to this Contract and/or its subject matter; and
- 11.2.7 the Contractor will promptly co-operate (and will procure that each of its employees, agents, sub-Contractors and any others performing services on its behalf in relation to this Contract and/or its subject matter will co-operate) with the Customer and/or any regulator and/or prosecutor in any investigation relating to any breach, or alleged breach, of any Bribery Legislation by the Contractor or any of its employees, agents, sub-Contractors or others performing services on its behalf; and
- 11.2.8 as at the date of signature of this Contract there is no outstanding investigation of the Contractor under any Bribery Legislation and in the last six years the Contractor has not been convicted of any offence under any Bribery Legislation or reached any settlement in relation to any alleged breach of any Bribery Legislation and has not self-reported any breach or suspected breach of any Bribery Legislation; and

11.2.9 the Contractor will obtain a warranty equivalent to that contained in Clause 14.2.5 from each of its agents, sub-Contractors and other persons performing services on its behalf in relation to the subject matter of this Contract.

## **12. Termination**

1. The Company may immediately terminate the Contract without payment of compensation or other damages caused to the Supplier solely by such termination by giving notice in writing to the Supplier if any one or more of the following events happens:
  - (a) the Supplier offers Goods or any other benefit as inducements to any officer of the Company to make an Order with the Supplier;
  - (b) the Supplier commits a breach of any of its obligations under these Conditions which is incapable of remedy;
  - (c) the Supplier fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under these Conditions after having been required in writing to remedy or desist from such breach within a period of 30 days;
  - (d) the Supplier proposes a voluntary arrangement within the meaning of Section 1 or Section 253 of the Insolvency Act 1986, or an interim order is made in relation to the Supplier under Section 252 of the Insolvency Act 1986, or any steps are taken or negotiations commenced by the Supplier or any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the other party and any of its creditors;
  - (e) the Supplier is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or the Supplier calls a meeting for the purpose of passing a resolution to wind it up, or such a resolution is passed, or the Supplier presents, or has presented, a petition for a winding up order, or the Supplier presents or has been presented, a petition to appoint an administrator, or any other steps are taken by the Supplier or any other person to appoint an administrator over the Supplier, or the Supplier has an administrative receiver or receiver appointed over all or any part of its business, undertaking, property or assets, or the Supplier takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it.
2. The termination of the Contract shall be without prejudice to the rights and remedies of either party which may have accrued upon to the date of termination.
3. Upon termination of the Contract for any reason whatsoever;

- (a) (subject to Condition 13.2 above) the relationship of the parties shall cease save as (and to the extent) expressly provided for in this Condition 14.3;
- (b) any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect;
- (c) the Supplier shall immediately return to the Company (or if the Company so requests by notice in writing, destroy) all of the Company's property in its possession at the date of termination including all confidential information, together with all copies of such confidential information and shall certify that it has done so, and shall make no further use of such confidential information.

**13. Force Majeure**

- 1. The Company reserves the right to suspend or to cancel the contract in whole or in part or vary the Order if it is prevented from or delayed in the carrying on of its business and / or its obligations under the Contract due to circumstances beyond the reasonable control of the Company including, without limitation, Acts of God, fire, flooding, lightening, war, revolution, acts of terrorism, strikes lockouts or other industrial action whether of the Company's own employees or others, failure of supplies of power, fuel transport, equipment, raw materials or other goods or services.

**14. Assignment, Sub-Contracting and The Contract and Third Party Rights**

- 1. The Contract is personal to the Supplier. The Supplier shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract without the prior written consent of the Company.
- 2. If the Supplier is in breach of Condition 17.1 above then the Company shall be entitled to reject the Goods.
- 3. The Company may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract at any time without the prior written consent of the Supplier.
- 4. No person who is not a party to these Conditions (including any employee, officer, agent, representative or sub-contractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of these Conditions which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must to this Condition 17.4.

**15. Notices**

1. All notices between the parties about the Contract must be in writing and delivered by hand or sent by special delivery;
  - (a) (in case of notices to the Company) to its registered office or such other address as shall be notified to the Supplier by the Company in accordance with this Condition 18; or
  - (b) (in the case of notices to the Supplier) to the address notified to the Company by the Supplier in writing.
2. Notices shall be deemed to have been received:
  - (a) if sent by special delivery post, two (2) days after posting (exclusive of the day of posting);
  - (b) if delivered by hand, on the day of delivery or if that is not a usual business day, the first usual business day after delivery.

18.3 Notices addressed to the Company shall be marked for the Attention of Sam Faulkner.

**16. General**

1. The Supplier shall not exercise any right of lien, general or otherwise and howsoever arising, over any goods or any other property of the Company in the Supplier's possession, in respect of any sums owed by the Company to the Supplier under the Contract or otherwise.
2. Nothing in these Conditions shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principle and agent between the parties and no employee of the Supplier shall be deemed to be or have become an employee of the Company.
3. No purported alteration or variation of these Conditions shall be effective unless it is in writing, refers specifically to the Contract and is signed by a duly authorised representative of each of the parties of the Contract.
4. The waiver by either party of any breach of these Conditions shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that over any other provision. Any waiver of any breach of these Conditions shall be in writing.
5. If at any time any of these Conditions is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from these Conditions and the validity and / or enforceability of the

remaining provisions of these Conditions shall not in any way be affected or impaired as a result of that omission.

17 . **Law and Jurisdiction**

These Conditions and any dispute or claim arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of Northern Ireland and all disputes or claims arising out of or relating to these conditions shall be subject to the exclusive jurisdiction of the Northern Ireland Courts to which the parties irrevocably submit.

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I / We \_\_\_\_\_

**being the duly appointed and authorised representative of**

\_\_\_\_\_

**hereby confirm acceptance of the above general terms and conditions. I / We also accept specific terms and conditions relating to each specific contact, as agreed at time of contract signing will prevail over any standard general term included above.**

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_